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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,016	07/25/2005	Yasuhide Nakayama	SHI-027	5028
32628 7590 04/13/2010 KANESAKA BERNER AND PARTNERS LLP 1700 DIAGONAL RD SUITE 310 ALEXANDRIA, VA 22314-2848				
EXAMINER				
STROUD, JONATHAN R				
ART UNIT		PAPER NUMBER		
3774				
MAIL DATE		DELIVERY MODE		
04/13/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/525,016

Applicant(s)

NAKAYAMA ET AL.

Examiner

JONATHAN STROUD

Art Unit

3774

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 March 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 25-31 and 79.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/DAVID ISABELLA/
Supervisory Patent Examiner, Art Unit 3774

/JONATHAN STROUD/
Examiner, Art Unit 3774

Continuation of 11, does NOT place the application in condition for allowance because: The arguments are unpersuasive. Applicant argues (briefly) that the office erred in indicating that the prior art reference disclosed the limitation "perforated at portions where the stent matrix does not exist" because the stent is added later in the prior art. This is unpersuasive, because without a stent matrix on the mandrel (as applicant contends), any laser perforated pores would NECESSARILY be formed at portions where the stent matrix did not exist. Applicant ADMITS on page 3 of his Request that this is possible ("need (sic) special technique to place the stent inside the polymer where the fine through pores do not exist."). As stated above, it is irrelevant that the matrix is installed previous or before, as some through pores will be formed at locations where the stent matrix does not exist (either at random, or because the stent IS NOT contemporaneously PRESENT on the mandrel).

Further, the order in which method steps are performed is irrelevant as long as they are performed. In the disclosure of fig. 2 in the prior art, a flexible solid polymer with stent matrix is shown where the fine through pores exist at portions only where the stent matrix does not. Still further, the method of forming fine through pores would as disclosed form pores in the graft, but would not form pores through a stent matrix - a stent matrix cannot "exist" within the solid polymer layer.

All of these arguments neglect to take into account that the reference of Edwin necessarily teaches a different method of formation, where the stent is inserted first before the perforation happens. A perforation in the shape of that disclosed in the prior art onto a mantle with a stent shaped the same as the prior art would necessarily teach the claim, as amended.

With respect to the arguments against the combination of the Edwin reference, applicant argues that the motivation in the Edwin reference is distinct from the motivation for the instant invention, alleviating problems introduced by the Edwin reference. Applicant does not attack the motivation to combine on grounds other than that it is not the same motivation the applicant has for his claimed invention. But the motivation to combine references need not be the same motivation the applicant has for their invention. Hence, this argument is moot. Further, the grammatical errors of the remarks render it difficult to understand the applicant's position with clarity.

For the foregoing reasons, applicant's arguments are unpersuasive.